

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2021

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
35 Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant requested information relating to the possible use of personal email addresses by officers at the Royal Borough of Greenwich (the council).
2. The Commissioner's decision is that the council was entitled to rely on section 14(1) when refusing to comply with the request, on the basis that it was vexatious.
3. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

4. On 18 June 2020, the complainant wrote to the council and requested information in the following terms:

'1. Please confirm how many times [name of officer A redacted] has previously used her personal Royal Borough of Greenwich email account as opposed to a shared inbox when dealing with customers complaints.

2. Please supply all internal emails from [name of officer A redacted] email dated 01/03/2019 at 8.35 titled Response letter. All corresponding emails to include from [name of officer B, and Officer C redacted], Adults-Casework and [name of officer D redacted].

- 3. Please confirm the Royal Borough of Greenwich's policy regarding sending client information via personal emails as opposed to a shared inbox.*
- 4. Please supply me with all information regarding the response sent from [name of officer E redacted] dated 16/05/2020. Please include all emails from [name of officer F, officer G, officer A and officer C redacted] and all from your legal department.*
5. The council responded on 14 July 2021, confirming to the complainant that it was refusing his request under section 14(1) of the FOIA.
6. The council advised that it was satisfied that it had already provided reasonable and reasoned responses to the complainant's correspondence; however, he had continued to raise questions about the work carried out by certain council officers.
7. The council went on to say that the level of contact that it had received from the complainant had placed a huge burden on resources, and that it had caused a disproportionate level of disruption, both to the council and its officers. It said that the complainant did not appear to take into account any of the details or explanations which the council had provided in its numerous responses to his correspondence, complaints and requests, and that it had simply led to the submission of further correspondence from him on the same subject matter. The council stated that it considered that a response to this request would lead to the same outcome.
8. The council also advised the complainant that it regarded the volume and pattern of requests and correspondence that it had received from him to show that he had no intention of letting matters lie, and that he was now at the point of pursuing the council to an unreasonable level.
9. The council concluded its response by saying that, having taken all factors into account, it regarded the request to be vexatious in accordance with section 14(1) of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 25 July 2020 to complain about the way his request for information had been handled.
11. The following analysis covers whether the council was entitled to rely on section 14 of the FOIA when refusing to comply with the complainant's request.

Reasons for decision

Section 14 – vexatious request

12. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
13. Whilst the term 'vexatious' is not defined in the FOIA, in the case of the *Information Commissioner v Devon CC and Dransfield*¹ the Upper Tribunal commented that the term could be defined as the '*manifestly unjustified, inappropriate or improper use of a formal procedure*'. The Tribunal's definition clearly established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
14. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues; (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3), the value or serious purpose of the request, and (4), harassment or distress of, and to, staff.
15. However, the Upper Tribunal did also caution that these considerations were not meant to be exhaustive. Rather, it stressed the importance of:

'adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.' (paragraph 45).
16. The Commissioner's guidance² on dealing with vexatious requests sets out a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious, including the context of

¹ [Microsoft Word - GIA 0246 2015-00.doc \(publishing.service.gov.uk\)](#)

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

the request and the history of the public authority's relationship with the requester, when this is relevant.

The complainant's representations

17. The complainant advised in his original representations to the Commissioner that he was concerned that the council had claimed to have previously answered the questions which he had set out in his request.
18. He advised that the council had not provided any evidence to support its claim, despite him requesting that it do so on six separate occasions. He also raised concerns that the council had used this same '*tactic*' to avoid providing information in response to a number of other information requests that he had made.

The council's representations

19. The council has advised the Commissioner that it regards the background and history of the request to be relevant to its decision to apply section 14(1) to the complainant's request.
20. It has explained that there are '*two broad groups of issues*' which the complainant has had with the council; one issue relates to planning matters that have affected a property which he has an interest in, and the other issue relates to the care received by a relative in 2016 (which the council states was dealt with by the Local Government Ombudsman in 2018).
21. The council has said that subsequent to these issues being raised, the complainant has made personal accusations and allegations against various officers at the council. It states that he has not complied with the council's request that he limit all his contact to one named officer, and that he has used a number of twitter accounts to make abusive tweets to the council and individual councillors. The council also made reference to legal cases and financial claims which the complainant has made against the council.
22. The council also states that the high level of correspondence it has received from the complainant represents the pursuit of issues beyond the point that a fair minded member of the public would consider reasonable; it claims that this level of correspondence on the same, or similar, subject matter can be readily characterised as obsessive. It goes on to say that it has also had the effect of harassing the council and its officers, and has diverted the latter from their primary duties.

23. It is the council's view that the complainant is dissatisfied with its handling of the issues which have arisen, and that the request under consideration is a continuation of that dissatisfaction. It has said that it believes that the request is designed to cause disruption or annoyance due to the ongoing complaints that the complainant has with the council, and that he is using the FOIA regime to reopen issues already raised. The council argues that the impact of dealing with the request would be unjustified and disproportionate in relation to its purpose and value, and that therefore section 14(1) of the FOIA is engaged.

The Commissioner's view

24. Firstly, the Commissioner considers it to be important to note that the complainant appears to believe that the council refused his request on the basis that it had already provided him with the specific information he had requested; his contention of this point appears to form the basis of his complaint.
25. The Commissioner notes that the council has never stated that it regarded the request above to be a repeat of a previous request. Indeed, it only cites section 14(1) of the FOIA (which relates to vexatious requests), and not section 14(2) of the FOIA (which relates to repeat requests) in its responses to the complainant. Nonetheless, the Commissioner is of the view that it may have been helpful had the council clarified this point when responding to the complainant's subsequent repeat requests for evidence that the requested information had already been released to him.
26. The council claims that the complainant is using the FOIA in an attempt to reopen issues that have been dealt with, that being primarily the alleged use of a personal email account by an officer at the council.
27. The Commissioner's investigation concluded that this was a process that would not meet the requirements of the data protection legislation, and both the council and the complainant were notified of her decision on 18 June 2020. Whilst the Commissioner confirmed that she did not intend to take any formal action against the council, she did set out certain steps of good practice which she stated that she expected the council to implement and follow in the future.
28. In this instance, the complainant's request which is currently under consideration primarily (but not exclusively) focuses on the officer who had made comment about the use of a personal email address; that officer is named in 3 of the 4 parts of the request. Furthermore, it is apparent that the current request relates directly to the data protection issue which has already been investigated by the Commissioner.

29. The Commissioner acknowledges that in some instances where a request is linked to some failing by a public authority, an argument for transparency and accountability can carry some weight in support of disclosure.
30. However, in this case, the original matter was already being investigated by the Commissioner when the complainant made his FOIA request (the outcome of the data protection complaint and his FOIA request were both sent on the same date).
31. The FOIA provides the public with access to information about public authorities; it helps increase public participation in decision making, makes public authorities more accountable and transparent, and builds up public confidence and trust. However, it is not intended to be a mechanism for individuals to 'interrogate' a public authority about each and every point that relates to a particular matter that they have concerns about.
32. The Commissioner is satisfied that her investigation into the data protection concern raised by the complainant would have already considered all the relevant information necessary to form a view on the adequacy of the council's processes. Furthermore, the complainant was notified of the outcome of this investigation and the action which was to be taken. However, despite this, it would appear that the complainant has continued to request that the council provide information relating to this matter, and the officer involved.
33. Serious purpose and value will often be the strongest argument in favour of the requester when a public authority is deliberating whether to refuse a request under section 14(1). The Commissioner's guidance states that the key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption and irritation that would be incurred by complying with that request. It states that this should be judged as objectively as possible - would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
34. In this instance, the complainant may, or may not, have valid concerns about how the council has dealt with the two issues referred to in paragraph 20 of this decision notice. However, with regards to this particular request, the Commissioner considers the council's argument that the complainant is attempting to persist with an issue which has already been comprehensively addressed to carry some significant weight.

35. Whilst section 14(1) is not subject to a traditional public interest test, it was confirmed in the Dransfield case (previously referred to in paragraph 13 of this decision notice), that it may be appropriate to ask the question:

'Does the request have a value or serious purpose in terms of the objective public interest in the information sought'

36. The Commissioner has also had regard to the case of Salford City Council v ICO and Tiekey Accounts Ltd (EA2012/0047) where the Tribunal, when ruling that the request was vexatious, made the following comment:

'...There was likely to be very little new information of any value coming into the public domain as a result of the disclosure of the material sought.'

37. The Commissioner does not wish to undermine the seriousness of the original data protection issue to which the request appears to relate. However, she believes it pertinent to note that the complainant is attempting to pursue a matter which was, at the time of his request, already under investigation by the ICO. It would also appear from the council's response to the complainant of 27 November 2020, that it was a matter that was considered by the LGO. In such circumstances, she has had some difficulty in identifying what value would be derived from the release of the requested information into the public domain.
38. Having considered the arguments put forward by the complainant and the council, the Commissioner considers this particular request to be a continuation of the complainant's pursuit of a matter that has been subject to at least one independent investigation, and which has been fully dealt with, and concluded.
39. On the basis of the evidence provided, and after taking into account the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that the request meets the Tribunal's definition of a *'manifestly unjustified, inappropriate or improper use of a formal procedure'* and that it was vexatious within the meaning of section 14(1).
40. As a result, the Commissioner is satisfied that, in respect of this particular request, the council was entitled to apply section 14(1) of the FOIA.

Right of appeal

41. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

42. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Ben Tomes
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